

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRIS LUSBY TAYLOR, et al.,

Plaintiffs,

v.

NO. CIV. S-01-2407 WBS GGH

JOHN CHIANG, et al.,

Defendants.

SUMMARY ORDER

Previously pending on this court's calendar for November 12, 2008, was defendant's motion to compel discovery regarding interim attorneys' fees. William Palmer represented plaintiffs. Robin Johansen appeared for defendants. After reviewing the motion and opposition and the parties' joint stipulation, filed November 17, 2008, the court now issues the following order. The court also schedules the remainder of briefing in regard to plaintiffs' motion for interim attorneys' fees.

I. Defendants' Motion to Compel Discovery

Defendants had originally moved to compel production of documents reflecting time spent by plaintiffs' counsel between January 2, 2001 and July 31, 2008 on seven matters, redacted as necessary; all documents reflecting time spent by attorney Boydston between July 22, 2002 and September 13, 2007, on the seven matters identified; and all documents supporting

1 plaintiff's request for costs in the amount of \$58,743.13. All of the aforementioned matters have  
2 now been resolved either by the parties' stipulation or by court order at hearing, as summarized  
3 below.

4 Costs

5 Defendants represented at hearing that plaintiffs produced satisfactory evidence of  
6 costs late in the day on November 10, 2008. This issue has been resolved.

7 Premiums for Obtaining Extraordinary Results

8 Defendants had sought evidence supporting Palmer's and Boydston's claims in  
9 their declarations that they are typically paid a premium for obtaining extraordinary results for  
10 their clients, and they are familiar with other firms who receive such premiums. See docket #  
11 116 at 4-5, # 120 at 8. Based on the parties' agreement at hearing that plaintiffs would withdraw  
12 these statements, the court denied this discovery, and stated it would not consider these  
13 statements in counsels' declarations.

14 Evidence of Lost Opportunities

15 Defendants had sought evidence to support plaintiffs' claim that this case  
16 deprived Palmer and Boydston from taking on other work. This evidence is probative, but as  
17 Palmer represented at hearing, he would have to create this discovery as he has no documents  
18 reflecting this assertion. Although a party should not be tasked with creating discovery,  
19 plaintiffs' counsel has the burden on the motion for interim fees. The declarations as submitted  
20 most likely will not meet this burden. Therefore, the court directed that if plaintiffs seek to  
21 produce declarations regarding work they did not accept as a result of this case, they were to do  
22 so no later than five days from the November 12, 2008 hearing.

23 Billing Records in Other Cases

24 Defendants had sought billing records in seven other cases brought by this  
25 counsel. In support of this request, they claim to know of about 150 hours billed in this case that  
26 are clearly related to other matters and suspect there are more.

1 At hearing, the parties agreed that all hours claimed by Boydston would be  
2 excluded from plaintiffs' fee request. In regard to other hours, the court ordered the parties to  
3 file a stipulation within five days from the November 12<sup>th</sup> hearing, attaching the Prinzing email  
4 outlining defendants' latest offer. That stipulation was timely filed. The terms of the parties'  
5 agreement are outlined therein. (Docket #193.)

6 Based on the joint stipulation filed November 17, 2008, and the court's orders at  
7 hearing, defendants' motion to compel discovery is granted in part as set forth above.

8 II. Scheduling

9 As ordered at hearing, defendants' opposition to plaintiffs' application for interim  
10 attorneys' fees shall be filed within 25 days of the November 12, 2008 hearing.<sup>1</sup> Plaintiffs may  
11 file a reply within one week after defendants file their opposition.

12 CONCLUSION

13 Accordingly, IT IS ORDERED that:

14 1. Defendants' motion to compel discovery, filed October 10, 2008, is granted in  
15 part as set forth in this order.

16 2. Defendants shall file their opposition to plaintiffs' application for interim  
17 attorneys' fees within 25 days of November 12, 2008.

18 3. Plaintiffs may file a reply within one week after defendants file their  
19 opposition.

20 DATED: 11/19/08

/s/ Gregory G. Hollows

21 \_\_\_\_\_  
GREGORY G. HOLLOWS  
U.S. MAGISTRATE JUDGE

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26 <sup>1</sup> The court's order on scheduling supersedes any agreement to an earlier date outlined in Ms. Prinzing's email and agreed to by the parties.